

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Timothy Kato,
Beverly Kato,

Debtor.

Bankruptcy No. 11-60530
Chapter 13

**NOTICE OF HEARING AND MOTION TO AVOID JUDICIAL LIENS
THAT IMPAIR AN EXEMPTION OF DEBTORS**

- TO: The United States Bankruptcy Court, the United States Trustee, the Panel Trustee, Lupient Leasing, Black Ridge Bank fka First State Bank of Alexandria, Affinity Plus Federal Credit Union, and all creditors and all parties who requested notice under Bankruptcy Rule 2002.
1. The debtors herein move the court for the relief requested below and give notice of hearing.
 2. The Court will hold a hearing on this motion at **11:30 a.m. on May 22, 2012, in US Bankruptcy Court, Courtroom 2, 204 US Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.**
 3. Any response to this motion must be filed and served not later than May 17 2012, which is five days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
 4. The court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334. This proceeding is a core proceeding. This case was filed on May 19, 2011. The case is now pending in this Court.
 5. This motion arises under 11 U.S.C. § 522(f)(1)(A) and Minn. Stat. § 510.07. This motion is filed under Bankruptcy Rule 9014 and Local Rule 9013-1. Movants request relief with respect to the avoidance of judicial liens impairing their exemptions.
 6. The debtors filed for protection under chapter 13 of the bankruptcy code on May 19, 2011. The debtors resided in 304 Woodsman Drive NE, Alexandria, Minnesota until February 28, 2011 and were the fee owners of said property on the date of filing. The debtors exempted their interest in said property under 11 U.S.C. § 522(d)(5).

7. The debtors had retained a realtor to facilitate a short sale of the 304 Woodsman Drive NE property legally described as: Lot Four, Block Two, Woodsman Cove, Douglas County, Minnesota.
8. The debtors wish to sell to Daren W. Myran, for the sum of One Hundred Seventy-seven Thousand, Five Hundred and 00/00 Dollars (\$177,500.00), the bankruptcy estate's interest in the following real property in Douglas County, Minnesota:

Lot Four, Block Two, Woodsman Cove, Douglas County,
Minnesota.

9. The debtors have three judgments docketed against them in Douglas County, Minnesota which are impairing the debtors' exemption in said property:

21-C2-04-000422	Lupient Leasing docketed on 3/31/2004 for \$4,716.53
21-CV-09-1486	Blackridge Bank (fka 1st State Bank Alexandria) docketed on 9/15/2009 for \$34,165.86
21-CV-09-2226	Affinity Plus Federal Credit Union docketed on 9/9/2009 for \$60,807.44.

10. The debtors do not intend to gain financially from the transaction. Rather, all proceeds are earmarked to be paid to secured lenders, costs, and fees associated with the sale. The debtors only hope to improve their credit rating by not having a foreclosure on their credit records.
11. Notwithstanding, the debtors' intention to not take any proceeds at sale, they are entitled to avoid the judicial liens listed in paragraph nine pursuant to 11 U.S.C. § 522(f)(1)(A) since they are claiming an exemption in the real property in question.

WHEREFORE, Movant herein seeks an Order of the Court granting the debtors' motion to avoid the judicial liens impairing the debtors' exemption of Lot Four, Block Two, Woodsman Cove, Douglas County, Minnesota, and for such other and further relief as the Court deems just and equitable.

Dated: April 30, 2012.

Velde Moore, Ltd.

/e/ Logan Moore

Logan Moore
Attorney for Debtors
1118 Broadway
Alexandria, MN 56308
Attorney I.D. #312083

Verification. I, Logan Moore, attorney for the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: April 30, 2012.

Velde Moore, Ltd.

/e/ Logan Moore

Logan Moore

Attorney for Debtors

1118 Broadway

Alexandria, MN 56308

Attorney I.D. #312083

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MEMORANDUM OF LAW

Pursuant to 11 U.S.C. § 522(f)(1)(A) the debtors may avoid judicial liens that impairs their claimed exemption. The debtors have claimed their interest in Lot Four, Block Two, Woodsman Cove, Douglas County, Minnesota exempt under 11 U.S.C. § 522(d)(5). Further, under Minnesota Statute Section 510.07, the proceeds from the sale of a homestead are exempt from judgment or debt. The debtors are not considered to have abandoned said property due to the fact that it entered the bankruptcy estate with six months of the last day the debtors lived there on a full time basis. Therefore, the proceeds from the sale of this parcel of real property should not be subject to the liens of judicial creditors.

Dated: April 30, 2012.

Velde Moore, Ltd.

/e/ Logan Moore

Logan Moore

Attorney for Debtors

1118 Broadway

Alexandria, MN 56308

Attorney I.D. #312083

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ORDER

This matter came before the Court on the motion by the debtors to avoid the attachment of judicial liens to an exempt asset and the proceeds thereof,

IT IS HEREBY ORDERED:

1. The judicial liens held by the following creditors against the debtors shall not attach to Lot Four, Block Two, Woodsman Cove, Douglas County, Minnesota or the proceeds thereof:

21-C2-04-000422	Lupient Leasing docketed on 3/31/2004 for \$4,716.53
21-CV-09-1486	Blackridge Bank (fka 1st State Bank Alexandria) docketed on 9/15/2009 for \$34,165.86
21-CV-09-2226	Affinity Plus Federal Credit Union docketed on 9/9/2009 for \$60,807.44.

Dated:

Dennis D. O'Brien
United States Bankruptcy Court Judge

STATE OF MINNESOTA)
) ss.
COUNTY OF DOUGLAS)

Lauren Grothen, of the City of Alexandria, County of Douglas, in the State of Minnesota, being duly sworn, says that on the 30th day of April, 2012 she served the attached **Notice of Hearing and Motion to Avoid Judicial Liens that Impair an Exemption of Debtors**, by electronically filing with:

US Bankruptcy Court
204 PO Building
118 S. Mill Street
Fergus Falls MN 56537

The following parties were served automatically by the United States Bankruptcy Court at the following email address:

Mr. Habbo G. Fokkena
ustregion12.mn.ecf@usdoj.gov

Mr. Kyle Carlson
info@carlsonch13mn.com

The following parties were served by mailing a true and correct copy thereof, enclosed in an envelope with first-class postage prepaid, and by depositing same in the post office at Alexandria, Minnesota, addressed as follows:

Lupient Leasing
7100 Wayzata Blvd
Minneapolis, MN 55426

Black Ridge Bank
3313 Hwy 29 South
Alexandria, MN 56308

Affinity Plus Federal Credit Union
406 W Washington Street, Suite 6
Brainerd, MN 56401

Affinity Plus Federal Credit Union
c/o Messerli & Kramer, P.A.
3033 Campus Drive, Suite 250
Plymouth, MN 55441

and I declare under penalty of perjury that the foregoing is true and correct.

Date: April 30, 2012

/e/ Lauren Grothen
Lauren Grothen